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Appeal from Circuit Court, Isle of Wight County.

Suit by James E. Avis against the Virginian Railway Company and others. From the decree rendered, defendants appeal. Affirmed.

Loyall, Taylor & White and *G. A. Wingfield*, all of Norfolk, and *Hugh L. Holland*, of Suffolk, for appellants.

Ino. N. Sebrell, Jr., of Norfolk, for appellee.

ATLANTIC COAST LINE R. CO. *v.* TYLER.

March 13, 1919.

[98 S. E. 641.]

1. Appeal and Error (§ 1002*)—Review—Verdict on Conflicting Evidence—Errors of Law.—Verdict of jury on conflicting evidence is conclusive on Supreme Court, and will not be disturbed unless some harmful error of law was committed by the trial court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Evidence (§ 73*)—Presumption—Compliance with Statute.—In action against railroad for injuries at crossing, there is a presumption, from the fact that the railroad erected gates, that they were erected in obedience to a city ordinance.

3. Appeal and Error (§ 231 (5)*)—Reservation of Grounds of Review—Objection to Ordinance.—In action for injuries at a railroad crossing, where defendant objected to introduction of city ordinance requiring vertical arm gates at crossing, without specifying any ground therefor, it cannot complain on appeal that ordinance was inadmissible because relating only to gates to be erected when deemed necessary and required by committee on streets.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 560.]

4. Railroads (§ 307 (4)*)—Injuries at Crossing—Duty to Erect Gates—Negligence.—It was absolute duty of railroad to erect vertical arm gates at city crossing as required by city's ordinance, not merely its duty to use ordinary care to obey the ordinance, and any failure to erect such gates, if the sole proximate cause of injury to plaintiff, was negligence sustaining recovery.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 361.]

5. Railroads (§ 317*)—Injury at Crossing—Instruction.—In action against railroad for injuries to plaintiff at city crossing, trial court properly instructed that if train struck plaintiff's buggy was operated at more than four miles an hour, speed fixed by ordinance, railroad was negligent, and if jury believed such negligence was prox-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

imate cause of accident, and plaintiff was not negligent, they must find for plaintiff.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 412.]

6. Railroads (§ 351 (22)*)—Injuries at Crossing—Instruction on Last Clear Chance—Evidence.—In action against railroad for injuries to plaintiff whose buggy was struck at city crossing, where it was held on the track by a lowered gate, evidence held sufficient to justify giving of an instruction on last clear chance.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 758.]

7. Railroads (§ 346 (5)*)—Injuries at Crossing—Contributory Negligence—Burden of Proof.—In action against railroad for injuries at crossing, burden to prove plaintiff's contributory negligence is on the railroad, unless it appears from plaintiff's evidence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 406.]

8. Trial (§ 229*)—Instructions—Repetition—Emphasizing Propositions.—It would be improper to repeat and emphasize propositions of fact and law which already had been clearly stated.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

9. Trial (§ 252 (9)*)—Abstract Instruction.—In action for injuries at railroad crossing, when plaintiff in her buggy was caught on tracks by lowered gates, and struck by freight train, instruction based partly on supposition that gates on one side were being let down at time buggy was driven on tracks on other side held properly refused as without support in evidence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 720.]

10. Trial (§ 260 (1)*)—Instructions—Repetition.—An instruction, based on a theory, supported by evidence, on which the jury had already been sufficiently instructed, was properly refused.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

Error to Hustings Court of Richmond.

Action by Mattie Tyler against the Atlantic Coast Line Railroad Company. From judgment for plaintiff, defendant brings error. Affirmed.

Bernard Mann, of Petersburg, *E. P. Cox*, of Richmond, and *Wm. B. McIlwaine*, of Petersburg, for plaintiff in error.

Nunnally & Miller, of Richmond, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.